

**IN THE MATTER OF:** \*  
**TJW DOGS OF SILVER SPRING, LLC** \*  
**d/b/a THE DOG STAY** \*  
 Petitioner \*  
 Terry Whitehouse \*  
 Molly Habermeier, Esquire \*  
 For the Petitioner \*  
 \* \* \* \* \* Board of Appeals No. S-2769  
 (OZAH No. 10-22)  
 \* \* \* \* \*  
 Ms. Dale Barnhard \*  
 Community Participant \*  
 Neither in Support nor Opposition \*  
 \* \* \* \* \*

## **I. STATEMENT OF THE CASE**

In Petition No. S-2769, TJW Dogs of Silver Spring, LLC, d/b/a The Dog Stay, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.02 to allow operation of an animal boarding place, on property located at 8122 Georgia Avenue, Silver Spring, Maryland. The legal description of the property is Parcel 763, Tax Map JN33.

On March 9, 2010, the Board issued a notice of a public hearing before the Hearing Examiner for July 19, 2009. Exhibit 11(b). A subsequent notice issued by the Board on March 18, 2010, corrected the year listed in the original notice to 2010. Exhibit 12.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in its report dated June 7, 2010 (Exhibit 15), recommended approval of the Petition, with five (5) conditions.<sup>1</sup> The Montgomery County Planning Board reviewed the matter on July 8, 2010, and voted to recommend approval subject to an additional two (2) conditions. Exhibit 18.

The hearing went forward as scheduled on July 19, 2010. There was no opposition, although a neighbor, Dale Barnhard, testified that she had some concerns regarding the petition, primarily relating to the care of the boarded animals. At the public hearing, the Hearing Examiner requested additional documents to substantiate compliance with special exception standards. The record was held open until August 31, 2010, to permit the Petitioner to file a revised Statement of Operations, a revised acoustical study, and other documents and for commentary by Technical Staff and interested parties. T. 70-73.

Petitioner made the required filings (Exhibits 22(a), 22(b), 22(c), 23(a), and 23(b), and their attachments), and a Supplemental Report was received from Technical Staff (Exhibit 25).

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<sup>1</sup> The Technical Staff Report, Exhibit 15, is frequently quoted and paraphrased herein.

On August 30, 2010, the Petitioner submitted a response to the Technical Staff's Supplemental Report, relating to the proposed signage on the property.

The record was reopened on September 7, 2010, to admit an *ex parte* communication from the office of Senator Jamie Raskin urging approval of the petition, to which the Hearing Examiner responded on September 7, 2010, stating that he would not rely on the request in forming his recommendation due to its *ex parte* nature. Exhibits 27, 28. Pursuant to Section 2A-8(b)(2) of the County's Administrative Procedure Act, the communication was included in the record and the record was held open for an additional ten (10) days to permit any interested party to submit responses or additional comments. Exhibit 29. The record again closed on September 20, 2010. On October 21, 2010, the Hearing Examiner issued an Order extending the time for filing this report until November 12, 2010.

For the reasons set forth below, the Hearing Examiner recommends approval of the Special Exception petition, subject to the conditions set forth in Section V of this report.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property and its Current Use**

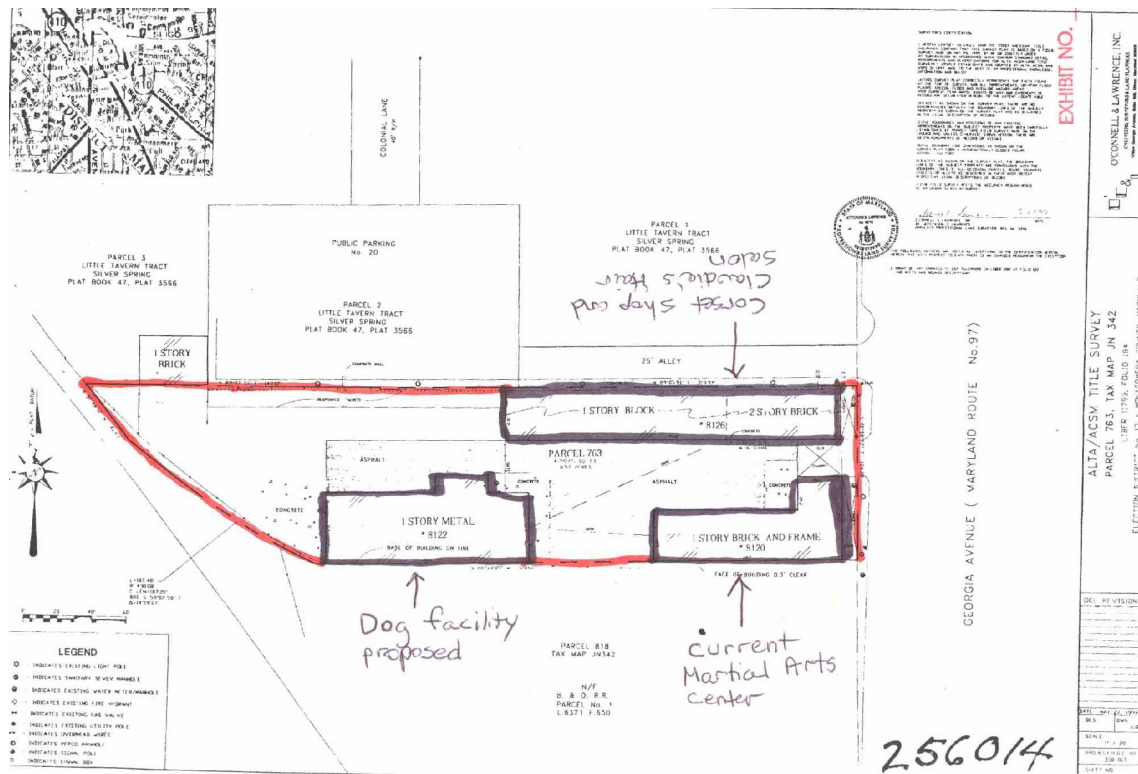
The subject property is located at 8122 Georgia Avenue, Silver Spring, Maryland, on the west side of Georgia Avenue, north of its intersection with Blair Mill Road. It contains a total of 0.97 acres, and is zoned CBD-2. A fire station is located immediately to the south of the property, the Metrorail train tracks are to the southwest of the property, and Silver Spring Road and public parking are located immediately to the north of the property. Exhibit 4(a); Tr. 23-25.

The parcel is improved with three separate buildings having addresses of 8120, 8122, and 8126 Georgia Avenue as depicted on the Survey Plan set forth below. The

buildings immediately abutting Georgia Avenue, marked as “8120” and “8126” on the Survey Plan (shown below), are operated as a martial arts studio and a hair salon and corset shop, respectively.

### Survey Plan

The driveway access from Georgia Avenue leads to a paved area which will serve as parking for the use shown on page 5. T. 23-24, Exhibits 4(b) and 6.





**View of Driveway Access From Georgia Avenue**

The building proposed for the animal boarding facility (8122 Georgia) is located to the rear (west) and south side of the parcel, approximately 180 feet from Georgia Avenue. Exhibit 15, p. 2. Eight parking spaces are reserved for the animal boarding facility in the paved area within the interior of the property. T. 36.



**View Facing West from Driveway Access**

The structure proposed for the animal boarding place is a corrugated metal structure. Exhibit 15. No new construction will occur on the property.

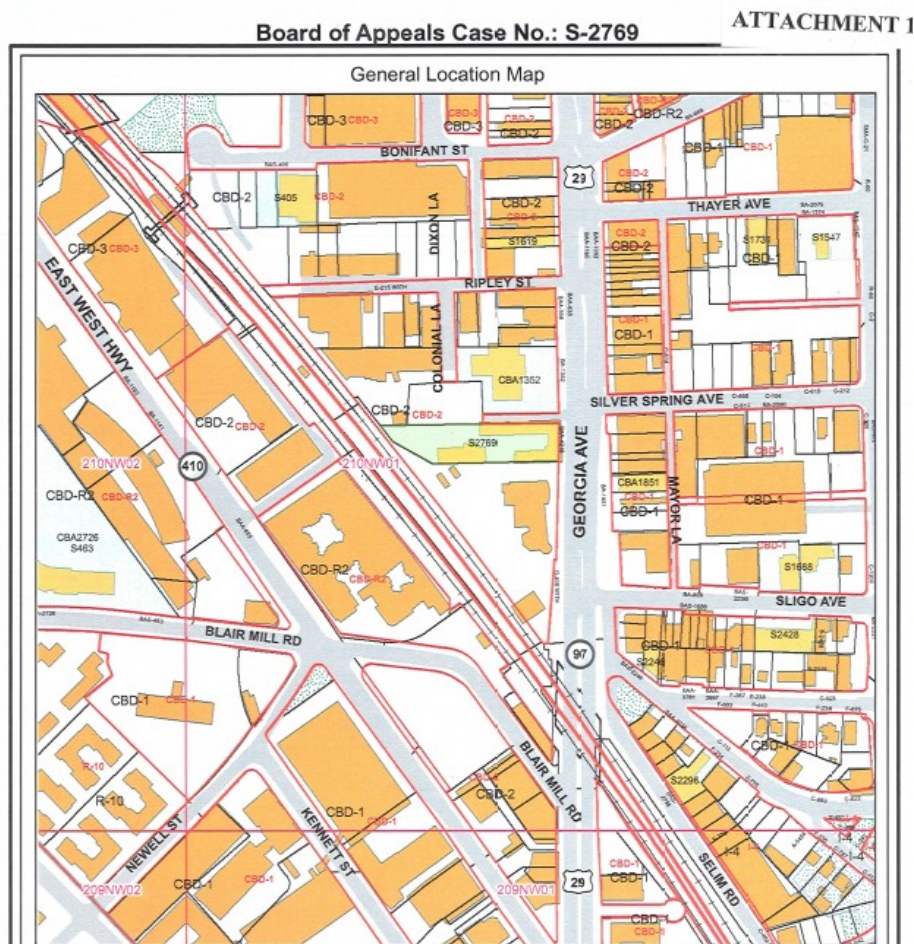


**View Facing West from Parking Lot Toward Building**

### **B. The Surrounding Neighborhood**

Technical Staff reports that the properties immediately to the north, west and south of the site are zoned CBD-2. Exhibit 15, p. 2. The properties across Georgia Avenue are zoned CBD-1. Exhibit 15, p. 1. Technical Staff has delineated the neighborhood in which the property is located as that bounded by Ripley Street to the north, Georgia Avenue to the east, WMATA train tracks to the west and the Silver Spring firehouse to the south depicted on Attachment 1 to its report, shown on page 7. Exhibit 15, p. 2. The closest residential buildings are to the southwest of the site, approximately 2,100 feet away from the site on the opposite side of the Metrorail tracks. Exhibit 15, p. 2. The Hearing Examiner accepts that description as defining the general neighborhood in this case.





### C. The Master Plan

The subject property lies within the Ripley District of the 2000 Approved and Adopted Silver Spring Central Business District Sector Plan. Exhibit 7(b). The Plan envisions that the Ripley District become a revitalized, mixed use district with its primary focal point high density, transit-oriented mixed-use development. Exhibit 15, p. 3; Plan, p. 45. The Plan recommends expanding the range of uses within the District to stimulate development and allow both high density residential and commercial uses. Plan, p. 45. Technical Staff concluded that the proposed use conforms to the Plan's recommendations because the boarding facility would be a new use for the area. The Hearing Examiner agrees with Technical Staff's conclusion because it is both a new use, and because, according to

Petitioner's testimony, the use will provide a service to pet-owners dropping their pets off on the way to and from work, thus supporting the residential uses in the neighborhood and furthering the "mixed use" goal of the Sector Plan. T. 37-38.

#### **D. The Proposed Use**

The Petitioner proposes to operate an animal boarding, day care, and grooming business in an existing building of approximately 5,285 square feet. Exhibit 15, p. 3. The business will operate daily between 7:00 a.m. and 7:00 p.m. including weekends. Exhibit 15, p. 3; T. 58.

All services will be provided inside the building in four separate rooms, one for a small dog day care, one for a medium and large dog day care, a boarding room with crates, and a grooming room. Exhibit 15, p. 3. Petitioner proposes to have a maximum of sixty (60) dogs on the site at one time and a maximum of six (6) employees, including a receptionist, a small dog handler, a large dog handler, and a groomer. Exhibit 22(a), pp. 3-4. Clients will drop-off and pick up pets in the parking area within the interior parking area. Petitioner's lease reserves eight (8) parking spaces for use by the boarding facility. Exhibit 8(a), T. 36. All care for the dogs, including exercise, will be conducted within the building. There will be two (2) designated dog litter areas with odor absorbing litter material, including waste disposal bags that may be placed in sealed receptacles. Exhibit 22(a).

Petitioner proposes three (3) signs for the business conducted on the property. The first is a wall sign measuring 8.5 feet by 4.5 feet (for a total of 38 square feet) to be located on the east side of the building oriented toward Georgia Avenue. Exhibits 22(c) and 25, p. 1. Petitioner proposes to light the sign with two (2) gooseneck lights. Exhibits 22(c). The



second two signs are located on each side of a pylon visible from Georgia Avenue. Petitioner proposes these sign to measure 10 feet by 8 feet (a total of 80 square feet). Technical Staff recommended approval of the 38-square foot sign located on the building with one gooseneck lamp. Exhibit 25, p. 1. Technical staff did not recommend the two pylon signs because “[S]taff’s understanding is that a variance is required for the proposed location of this type of sign; therefore, this is an issue that must be addressed through the Department of Permitting Services.” Exhibit 25, p. 1. Petitioner counters that the pylon sign is permissible because it is located on common area. Exhibit 26.



**Proposed Wall Sign**



### **Proposed Pylon Sign**

#### **E. Traffic Impacts**

A “Traffic Statement” was filed with the Statement of Operations in support of the petition (Exhibit 10) by the Petitioner rather than a traffic expert; therefore, the Hearing Examiner will rely instead on the analysis by Technical Staff, which reports that no adverse transportation impacts would result from the proposed use. Exhibit 15, p. 3. According to Petitioner’s Traffic Statement, most dogs participating in the day care activity will be dropped off daily between the hours of 7:00 a.m. and 10:00 a.m. and be picked up between 4:00pm and 7:00pm. Petitioner estimates that one-fourth of the pet owners will have multiple dogs, resulting in 22 drop-offs over the three-hour period. Exhibit 3, p. 5. Petitioner also estimates that that 90 percent of the trips will be pass-by trips, i.e., those already on the roadways oriented to another primary location.

Technical Staff found this estimate reasonable given the property’s proximity to several existing and proposed high-rise residential communities along East-West Highway and Fenton Street corridors as well as the Silver Spring Metrorail Station. With the 90 percent pass-by trip percentage, Technical Staff found that the proposed use would

generate four new trips during the morning and evening peak hours and therefore does not require a Local Area Transportation Review (LATR) traffic study. Exhibit 15, p.3. Applying the Policy Area Mobility Review requirements for the Silver Spring CBD Policy Area, Technical Staff advises that the “subject use has no PAMR mitigation requirement and satisfies the PAMR requirements of the APF test.” Exhibit 15, p. 5. There is no evidence to the contrary in the record and the Hearing Examiner accepts these unrebutted findings.

### **F. Environmental Impacts**

Technical Staff found that the proposed use will not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity Exhibit 15, p. 5. The Petitioner submitted a Sound Insulation Analysis prepared by Acoustical Design Collaborative, LTD, issued on February 23, 2010, which concluded that the exterior noise levels would not exceed 40 dBA at a distance of ten (10) feet from the building. Exhibit 9. Petitioner stated at the public hearing that, while the initial sound study had assumed that a windowed area in the building would be dry-walled, she did not plan on making this improvement. T. 40-42.

At the request of the Hearing Examiner, Petitioner submitted an amended Statement of Operations clarifying that the windows would not be dry-walled and submitted a revised Sound Insulation Analysis stating that the noise levels would not exceed those required by the Montgomery County Code even without the drywall. Exhibits 20, 22(a), 23(a). Technical Staff submitted a Supplement Report finding that, based on the revised Sound Insulation Analysis, noise levels from the proposed use would not exceed the requirements of the Montgomery County Code. Exhibit 25. There

being nothing in the record to rebut this finding, the Hearing Examiner finds that sound levels from the proposed animal boarding facility will not exceed those required by law and the proposed boarding place will not cause objectionable impacts on adjoining properties.

### **G. Community Response**

There was no opposition to the special exception request, but there were some community concerns raised primarily related to the care of the boarded animals. Ms. Dale Barnhard submitted a letter to the Hearing Examiner raising several questions including (1) on how frequently the dogs were exercised, (2) whether the number of employees proposed would be sufficient to care for the animals boarded, (3) the security and fire prevention measures that would be in place and (4) whether there would be any outdoor dog runs. Exhibit 16.

Petitioner addressed these concerns by stating that (1) the animals boarded would not be unattended at any time, (2) the law prohibited exercising the animals outdoors, but there would be indoor runs, (3) all litter areas would be indoors. In addition, she testified that the Planning Board had added a condition increasing the possible number of employees at the facility to six. Upon the conclusion of the public hearing, Ms. Barnhard testified that she was not opposed to the application. T. p. 74. As a result, the Hearing Examiner concludes that those of Ms. Barnhard's concerns relevant to the special exception were addressed and did not warrant denial of the petition.

### **III. SUMMARY OF THE HEARING**

Petitioner testified at the public hearing in support of the petition. Ms. Dale Barnhard, a Silver Spring resident, testified as to her concerns relating to the petition, but did not oppose

the petition.

### **A. Petitioner's Case**

Ms. Terry Whitehouse testified on behalf of the Petitioner. Ms. Whitehouse stated that she accepted the findings and conclusions of the Technical Staff and its report (Exhibit 15) as part of her testimony and agreed to the conditions recommended by the Planning Board. Tr. 17, 40. She also identified a plat depicting the subject property as well as photographs taken of the property. Tr. 21-34.

Ms. Whitehouse stated that she believed that the subject property was a “perfect location” for an animal boarding facility due to its proximity to several high-rise residential buildings nearby in Silver Spring which permitted dogs. Tr. 24. She identified Exhibit 21, a map of those residential developments in relation to the boarding facility. Exterior lighting will be provided by three existing lights on the building, one on the east side facing Georgia Avenue, one over the entrance to the building, and one on the northwest side of the building facing the Metro. Tr. 52-54. Two streetlights provide ambient light in the parking area. Tr. 33-35. On cross-examination, Ms. Whitehouse testified that she had a working fire alarm and a buzzer at the entrance for security. Tr. 65-66. The dogs will be attended at all times while they are boarded at the property. Tr. 58, 61. Dogs will be exercised within the facility and an indoor litter area is provided. Tr. 67-68. She testified that the Planning Board condition imposing a limit of sixty (60) dogs on the property at any time would be applied to all dogs, including those training and grooming, and not just the boarded dogs. Tr. 68.

### **B. Community Testimony**

Ms. Dale Barnhard testified that she lives at 709 Gist Avenue in Silver Spring, Maryland, approximately a quarter mile from the proposed facility. Tr. 64. She stated that

she is concerned because the location was isolated and she did not believe that anyone monitored the area. Tr. 66-67. She also voiced her concerns whether the dogs would have sufficient opportunity to eliminate waste without going outside and whether they would be sufficiently exercised if they did not go outdoors. Tr. 67, 69.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if she complies with the recommended conditions. Exhibit 15.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

##### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its



physical size or scale of operations.” Code, Section 59-G-1.21. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified four inherent characteristics necessarily associated with an animal boarding facility: (1) vehicular trips to and from the site; (2) noise and odor of animals; (3) deliveries of mail and small parcels; and (4) drop-off and pick-up of dogs in parking areas. Technical Staff found that there are no non-inherent adverse effects associated with the proposed use. Exhibit 15, p. 7.

The Hearing Examiner accepts that listing as a fair description of the inherent adverse impacts of an animal boarding facility, but would add a more direct reference to the traffic, parking and lighting routinely created by such a use. Noise could also be an inherent effect, but acoustical conditions of the special exception circumscribe any such noise characteristics.

Technical Staff found (Exhibit 15, p. 7):

The animal boarding use in this application is approximately 5,285 square feet and is located in an existing one-story building. The use will occur entirely within the building. Staff finds that the size, scale, and scope of the proposed use is minimal and is not likely to result in any unacceptable noise, traffic or environmental impacts. There are no non-inherent adverse effects associated with this use.

The Hearing Examiner agrees with Staff that no non-inherent adverse effects are likely to result from the activities associated with the petition. The use is relatively small in scale, the site and the building are large enough to accommodate both the necessary parking and the maximum number of dogs, all activities other than drop-off and pick-up will occur inside the facility, the property is surrounded by non-residential uses

(including a fire house and Metrorail tracks), and the Sound Insulation Study (Ex. 23(a)) shows that all noise levels will comply with the requirements of the Montgomery County Code.

Under these circumstances, the Hearing Examiner concludes that there will be no adverse effects sufficient to warrant denial of the petition.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General Conditions:**

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

1. *Is a permissible special exception in the zone.*

Conclusion: An animal boarding place is a permitted special exception in the CBD-2 Zone, pursuant to Zoning Ordinance Sections 59-G.2.02, 59-C-6.22.

2. *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: As discussed in Part IV.C., below, the proposed use would comply with the standards and requirements set forth for the use in Code Section 59-G-2.02.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a*

*particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: As noted in Part II.C. of this report, the subject property lies within the Ripley District of the 2000 Approved and Adopted Silver Spring Central Business District Sector Plan, as amended. Community-Based Planning Staff concluded that the proposed special exception is consistent with the Sector Plan and would further the Sector Plan goal of increasing different uses within the Ripley District. Additionally, the Hearing Examiner also finds that the service provided to residential uses within the Silver Spring CBD promotes the mixed-use goal of the Sector Plan. Since the Master Plan recommended the existing CBD-2 zoning and the subject use is permissible by special exception in that zone, the Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The traffic generated by the site meets the requirements of both Policy Area Mobility Review and Local Transportation Area Review. Exhibit 15. The proposed eight parking spaces also meet the required standards and will be sufficient especially given the evidence that single owners will drop off multiple dogs at the same

time. Technical Staff reports, and the Hearing Examiner finds, that the site is adequately served by public facilities and will continue to be adequately served under the growth management policies in effect when the application was filed. Exhibit 15, pp. 4-5.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: There is no evidence indicating that the requested special exception will be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. Technical Staff suggests that the surrounding neighborhood may, in fact, be improved by filling a vacant property. Based on the evidence before it, the Hearing Examiner finds that the proposed use meets this standard.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The use will not cause objectionable noise, vibrations, fumes, odors, dust illumination, glare, or physical activity at the site. There will be no new construction on the site and no new lighting is proposed with the exception of two gooseneck lamps illuminating the proposed wall sign on the east side of the building. An acoustical study confirms that noise levels will be within code standards and all activities related to the special exception will take place within the interior of the building. Based on this evidence, the Hearing Examiner finds that the application will not have a objectional impact on surrounding properties and conforms with the above standard.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The subject property is setback approximately 180 feet from a major commercial thoroughfare (Georgia Avenue) to the east and surrounded by non-residential uses, including a fire house and Metrorail tracks, on the other sides. Technical Staff reports that, at its closest points, the residential properties (which are not single-family) to the west are approximately 2,100 feet from the subject property. Exhibit 15. Based on the evidence in this case, the Hearing Examiner finds that the proposed use is not sufficiently proximate to any one-family residential area to have an effect on a one-family neighborhood. As the use is consistent with the Master Plan (as set forth in Section II.C. above), this general condition is met.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Both the lighting from three flood lights located on the building and the ambient light from street lamps on Georgia Avenue will illuminate the property. Petitioner proposes that all entry will be by a security buzzer. Tr. 65. Technical Staff found that no evidence existed that the use would have an adverse effect on the surrounding neighborhood and that it was more likely that the proposed use

would benefit the community by occupying vacant space. Exhibit 15. The Hearing Examiner accepts this recommendation and finds that the application has met the above standard.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities. Exhibit 15. The evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (“PAMR”). As indicated in Part II. E. of this report, Technical Staff did do such a review, and concluded that the animal boarding place use would generate fewer than 30 peak hour trips and fewer than 4 new peak hour trips; therefore the special exception



application is not subject to either Local Area Transportation Review (LATR) or Policy Area Mobility Review (PAMR). Exhibit 15, p. 5. Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff's found that "[v]ehicular safety will not be diminished, since only a minimal increase in traffic is expected and no visual obstructions from the driveway onto the street are apparent." Ex. 20, p. 7. Based on this record, the Hearing Examiner finds that the use will not reduce the safety of vehicular or pedestrian traffic.

### **C. Special Standards: Animal Boarding Places**

The relevant special standards governing a special exception for an animal boarding place are found in Section 59-G-2.02. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that these special standards would be satisfied in this case, as outlined below.

*Sec. 59-G-2.02. Animal boarding place.*

(a) *In any central business district, commercial, or transit station zone where permitted by special exception, an animal boarding place must comply with the following conditions and requirements:*

(1) *Exterior runs, exercise yards, or other such facilities for the keeping of animals are not permitted.*

Conclusion: All activities, including pet exercise, grooming and day care, are to take place within the building. Therefore, the Petitioner complies with this standard.

- (2) *All interior areas for the keeping of animals must be soundproofed.*

Conclusion: The issue of potential noise from the animal boarding place was studied by acoustical engineers at Acoustical Design Collaborative, Ltd. Their report (Exhibit 23(a)) concludes that:

[A]ll of the rooms will meet the noise transmission limit of 55 dB(A) at the property line. No modifications are necessary to the building to be in compliance with the Montgomery County Noise Ordinance.

Technical Staff concluded that the petition will “not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity.” Exhibit 15, p. 10. Based on this evidence, the Hearing Examiner finds that this standard has been met.

#### **D. General Development Standards**

In addition to the general and special standards applicable to this special exception request, the Code contains additional development standards which may be relevant to this use, as outlined below:

*Section 59-G-1.23. General Development Standards:*

- (a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: Technical Staff found that the structure meets all of the development standards in the CBD-2 Zone. Exhibit 15, p. 6. Nothing in the record suggests to the contrary. Therefore, the Hearing Examiner finds that this general development standards have been met.

- (b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: Technical Staff found that the parking meets all the requirements of the CBD-2 Zone. Exhibit 15, p. 6. There being no evidence to the contrary in the record, the Hearing Examiner finds that the parking requirements of Article 59-E have been met.

(c) *Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
- (2) *Sand, gravel or clay pits, rock or stone quarries.*
- (3) *Sawmill.*
- (4) *Cemetery, animal.*
- (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) *Equestrian facility.*
- (7) *Heliport and helistop.*

Conclusion: This development standard is not applicable to this special exception.

(d) *Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: This special exception is exempt from the forest conservation requirements set forth in Chapter 22A of the Code. Exhibit 5(d).

(e) *Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board,*

*unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: This proposed use does not require a water quality plan since it is not in a special protection area; therefore, this requirement is inapplicable.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: Although not of sufficient adverse impact to justify denial of the special exception, the signage proposed by the Petitioner raises some concerns. Technical Staff advises that the proposed wall sign is permissible within the zone and recommends illumination from a single gooseneck lamp as opposed to the two lamps proposed by the Petitioner. Because the building on which the sign is located is in the interior of the lot, and because the sign meets the requirements of Section 59-F of the Code, the Hearing Examiner finds that the proposed wall sign with a single gooseneck light complies with the special exception standards. While the Department of Permitting Services will ultimately determine whether the pylon signs conform to the Sign Code, the Hearing Examiner finds that the large size of these signs (i.e., 80 square feet on each side) contributes to a signage landscape along Georgia Avenue that is already jumbled by numerous large commercial signs. Recognizing the importance to Petitioner of having signage visible from Georgia Avenue, the Hearing Examiner recommends that these signs be reduced by two-thirds the size proposed, if permitted, in order to lessen visual impact of the special exception use.

Technical Staff and Petitioner disagree on the need for a variance for the proposed pylon signs. Subject to the size limitation set forth above, the Petitioner will be required

to obtain a sign permit from the Department of Permitting Services, therefore, this condition will be met.

- (g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As the property is not located within a residential zone or adjacent to residential properties, this requirement is not applicable to the special exception request.

- (h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: The property is not located within a residential zone, and this standard is not applicable.

#### IV. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2769, which seeks a special exception for an Animal Boarding Place located at 8122 Georgia Avenue, Silver Spring, Maryland, be ***granted***, subject to the following conditions:

1. The Petitioner shall be bound by all of her testimony and exhibits of record, and by the testimony of her witnesses and her representations identified in this report.
2. Hours of operation are limited to 7:00 a.m. to 7:00 p.m., Monday through

Sunday.

3. The special exception is limited to a maximum of six (6) employees on site at any one time.
4. The number of dogs permitted to be on the site at any one time is limited to sixty (60) dogs.
5. Pursuant to 59-G-2.02(a)(1), dogs must not be walked or exercised on the exterior of the building.
6. The Petitioner must obtain a commercial kennel license to operate the animal boarding place.
7. Petitioner must comply with all requirements of her revised Statement of Operations (Exhibit 22(a)).
8. If permitted by the Department of Permitting Services, the two signs on each side of the pylon on the site shall not exceed sixty (60) square feet.
9. Illumination of any wall sign permitted on the property shall be by a single gooseneck light.
9. Petitioner must obtain a permit from the Department of Permitting Services for all signage on the site and sign variances, if required. Prior to posting any signs, Petitioner must file a copy of the sign permits and sign variances with the Board of Appeals.
10. Petitioner additionally must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 3, 2010

Respectfully submitted

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Lynn A. Robeson  
Hearing Examiner